

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3346

IN THE MATTER OF:

Served June 1, 1989

Application of LEATHERWOOD MOTOR )  
COACH CORPORATION Trading as EAST )  
COACH PARLOR CAR TOURS for a )  
Certificate -- Charter Operations )

Case No. AP-88-47

Application of LEATHERWOOD MOTOR )  
COACH CORPORATION Trading as EAST )  
COAST PARLOR CAR TOURS for )  
Temporary Authority -- Charter )  
Operations )

Case No. AP-89-20

By application in Case No. AP-89-20, filed April 21, 1989, Leatherwood Motor Coach Corporation trading as East Coast Parlor Car Tours (Leatherwood or applicant), seeks temporary authority pursuant to the Compact, Title II, Article XII, Section 4(d)(3), to transport passengers and their baggage in charter operations between points in the Metropolitan District, except between points solely within the Commonwealth of Virginia.

By Order No. 3263, served December 9, 1988, Leatherwood was granted temporary authority in Case No. AP-88-39 \*/ "to transport passengers, together with baggage in the same vehicle as passengers, in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia." The temporary authority granted by Order No. 3263 expires June 9, 1989.

As pertinent in Case No. AP-89-20, Section 4(d)(3) provides:

Such temporary authority unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of 180 days . . . .

Without reaching the merits of Leatherwood's application in Case No. AP-89-20, we conclude as a matter of law that we cannot grant the temporary authority sought therein because it would exceed the 180 day limit imposed by Section 4(d)(3). For this reason the application must be denied.

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\*/ Also see Case No. MP-88-37, Investigation of Need for Charter Coach Service Pursuant to the Compact, Title II, Article XII, Section 4(d)(3).

The Compact, Title II, Article XII, Section 4(e) provides, in part:

The Commission may, if it finds that the public convenience and necessity so require, require any person subject to this Act to extend any existing service or provide any additional service over additional routes, within the Metropolitan District.

When we issued temporary authority to applicant in Case No. AP-88-39, we were persuaded that there was an immediate and urgent need for Leatherwood's service and that there was no carrier service capable of meeting such need, within the meaning of Section 4(d)(3). Our decision relative to Leatherwood was based on numerous affidavits in specific support of Leatherwood's application for temporary authority. Our view of these matters has not changed and is, in fact, reinforced by the evidence submitted by Leatherwood in support of its present application in Case No. AP-89-20. However, as we have already concluded, the 180-day limitation in Section 4(d)(3) is binding.

Our authority to require an extension of existing service pursuant to Section 4(e) imposes the need for additional findings, including that the public convenience and necessity require the service, that the person (in this case Leatherwood) is subject to the Act (Compact), and that the entity required to provide the service "is currently earning a reasonable return on its operation as a whole in performing transportation subject to this Act." We take official notice of the record in Case Nos. MP-88-37, AP-88-47, and AP-89-20. We find that the public convenience and necessity require the continued provision of charter service by Leatherwood as described in Order No. 3263. This specifically includes the finding in Order No. 3263 pursuant to Section 4(d)(3) that there is no carrier service capable of meeting such need, as well as a limited and preliminary finding after hearing held May 2, 1989, in Case No. AP-88-47, that the public convenience and necessity require that we direct the extension of service contemplated herein. We find, as we have found before (e.g., Case No. AP-88-39), that Leatherwood is a carrier subject to the Compact. We further find, based upon financial data presented in Case Nos. AP-88-39 and AP-89-20, that Leatherwood is currently earning a reasonable return, within the meaning of Section 4(e). We note the very special and unusual circumstances in this case where we are able to assemble the necessary elements for directing the provision of service under Section 4(e) by drawing on evidence on the record of various current cases relating directly to the applicant herein.

We specifically note that in this order we grant Leatherwood neither temporary authority nor a certificate of public convenience and necessity, we are simply directing the extension of additional service pursuant to Section 4(e). This creates no presumption concerning our still-pending disposition of Case No. AP-88-47 with regard to any issues therein, specifically including public convenience and necessity or fitness. Our findings herein are limited in scope and horizon to the period preceding determination of Case No. AP-88-47, and are fully subject to our subsequent findings in Case No. AP-88-47. We

specifically provide that our limited findings herein are for the sole purpose of the action we take today, and that they shall have no implications concerning our deliberation of Case No. AP-88-47.

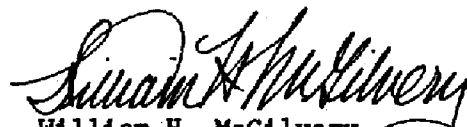
THEREFORE, IT IS ORDERED:

1. That Leatherwood Motor Coach Corporation trading as East Coast Parlor Car Tours is hereby directed, pursuant to the Compact, Title II, Article XII, Section 4(e), to transport passengers, together with baggage in the same vehicle as passengers, in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia.

2. That the directive contained herein shall be effective from June 10, 1989, through the date of final administrative resolution of Case No. AP-88-47, unless otherwise ordered by the Commission.

3. That the application of Leatherwood Motor Coach Corporation trading as East Coast Parlor Car Tours for temporary authority in Case No. AP-89-20 is hereby denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director